

COMMONWEALTH OF MASSACHUSETTS
SUPREME JUDICIAL COURT

SUFFOLK, ss.

No. SJC - 11693

COMMONWEALTH OF MASSACHUSETTS,
Appellee

v.

NYASANI WATT & SHELDON MATTIS
Defendant-Appellants

**COMMONWEALTH'S OPPOSITION TO MOTION OF FOUR DISTRICT
ATTORNEYS TO VACATE THIS COURT'S REMAND OR, IN THE
ALTERNATIVE, TO INTERVENE**

Suffolk County District Attorney Rachael Rollins, representing the Commonwealth, respectfully asks this Court to deny without a hearing the motion by the district attorneys for the Cape & Islands, Essex, Norfolk, and Plymouth districts. The motion, essentially to intervene in a Suffolk County prosecution, is without precedent or legal basis. In a pleading that strains credulity, these four men claim that their "interests" would not be "adequately represented" by the Suffolk County District Attorney in a Suffolk County case (Mtn. 3). This motion is nothing more than a misogynistic wolf in sheep's clothing. Never has this Court allowed one (let alone

four) elected district attorneys to intervene in another district attorney's matter. That long-standing record should be left intact. The motion should be denied on the papers.¹

The men's first requested relief -- vacating the remand without prejudice "to action by the legislature" -- is not even a recognized legal mechanism. In fact, it is impossible to find precedent

¹ In November 2013, a Suffolk County jury convicted Mr. Mattis and his co-defendant, Nyasani Watt, of first degree murder for the shooting death of Jaivon Blake. Mr. Watt, who was seventeen years old at the time of the murder, was sentenced to life in prison with the possibility of parole after fifteen years. *Commonwealth v. Watt*, 484 Mass. 742, 754 (2020). Mr. Mattis, who was eighteen years old at the time of the murder, was sentenced to life in prison without the possibility of parole. *Id.* at 754-755. In its June 2020 decision, this Court affirmed the convictions of both men and declined to revisit the issue of the constitutionality of a life sentence with the possibility of parole for juveniles. *Id.* at 754 (citing *Commonwealth v. Okoro*, 471 Mass. 51 (2015), and *Commonwealth v. Lugo*, 482 Mass. 94 (2019)). The Court noted, however, that the research in the area of the brain development of young adults has progressed in the six years since the Court decided *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655 (2013), and stated that it is time to "revisit the boundary between defendants who are seventeen years old and thus shielded from the most severe sentence of life without the possibility of parole, and those who are eighteen years old and therefore exposed to it." *Id.* at 755-756. Thus, Mr. Mattis's case has been remanded to the Superior Court for an evidentiary hearing on this subject. *Id.* at 756. On July 2, 2020, the undersigned District Attorney received the motion from the four non-parties which it opposes here. No advanced copy was sent before the men filed their motion, nor did they make a courtesy call to the undersigned District Attorney.

that addresses these men's convoluted and perplexing request, which is perhaps why they provided no legal support for their requested relief. To the extent the men ask this Court to exercise its authority pursuant to G.L. c. 211, § 3, they have not even touched, never mind met, the very high burden to justify the exercise of that extraordinary authority. "No party, including the Commonwealth, should expect this court to exercise its extraordinary power of general superintendence lightly." *Commonwealth v. Fontanez*, 482 Mass. 22, 24-25 (2019) (quoting *Commonwealth v. Richardson*, 454 Mass. 1005, 1006, (2009), S.C., 469 Mass. 248 (2014)). The men actually concede that they can resort to filing an amicus brief (Mtn. 3, 11).² Thus, they have another avenue through which to argue any "interests"

² This matter, as the men admit, will be greatly impacted by an extensive scientific record and thus seems especially amenable to an amicus who submits a "Brandeis brief". See Alan B. Morrison, THE BRANDEIS BRIEF AND 21ST CENTURY CONSTITUTIONAL LITIGATION, 18 Lewis & Clark L. Rev. 715, 715 (2014) (describing the Brandeis brief as "an advocacy tool used to persuade a court facing a difficult constitutional question how extra-record materials can help the court decide in favor of the advocate"). In fact, in 2019, the Supreme Judicial Court amended the amicus rule to add the words "or its officer or agency" in order "to make it clear that an officer or agency of the Commonwealth may also file an amicus brief as of right." Mass. R. App. P. 17 (Reporter's Notes).

- real or otherwise. For this reason alone, the request that this Court exercise its extraordinary powers under G.L. c. 211, § 3, must be denied.

The men's second requested relief -- for declaratory relief for a non-party to a criminal case -- is also completely without legal basis. It is well-settled that a complaint seeking declaratory relief may not be used post-conviction to avoid the gatekeeper provision of G.L. c. 278, § 33E, or to challenge the legality of a sentence even when the plaintiff *is the defendant* in the underlying criminal case. See *Shipps v. District Attorney for the Norfolk Dist.*, 472 Mass. 1001, 1002 (2015). These four men are not parties, nor can they be parties to this case. See G.L. c. 12, § 27.³ The party in the instant case is the Commonwealth, represented by District Attorney Rachael Rollins -- the first female District Attorney of Suffolk County and the first woman of color (Black) to serve as a District Attorney in the history of the

³ Section 27 reads: "District attorneys within their respective districts *shall appear* for the commonwealth in the superior court in all cases, criminal or civil, in which the commonwealth is a party or interested, and in the hearing, in the supreme judicial court2. . . ." G.L. c. 12, § 27 (emphasis added).

Commonwealth of Massachusetts - who was elected to represent the Commonwealth for cases within her district, Suffolk County. Query: what is it about District Attorney Rollins that is making these four men so worried about and interested in her ability to handle Suffolk County's investigations, cases, and appeals? By their own admission this matter addresses issues at the heart of *Diatchenko v. District Attorney for the Suffolk Dist.*, 466 Mass. 655 (2013). Tellingly, none of these men felt compelled to file a motion to intervene in that Suffolk County case. In fact, these four men have never filed any such motion under the administrations of the 15 men that preceded District Attorney Rollins. The purpose here by these men is not to intervene, but rather to interfere. Their motion, therefore, should be summarily denied.

Finally, the notion that these four men should be permitted to intervene in a criminal matter being adjudicated in another county is absolutely preposterous. As the men acknowledge (Mtn. 7-8), intervention is "a concept foreign to criminal procedure." *Republican Co. v. Appeals Court*, 442 Mass. 218, 227 n.14 (2004); see also *Miranda v. A Justice of*

the Superior Court Dept. of the Trial Court, 479 Mass. 1008, 1008 (2018) ("there is no basis in the Rules of Criminal Procedure or other law for a defendant to intervene in another defendant's unrelated criminal case"). Evidentiary hearings are routinely conducted by DAs' offices in individual cases throughout the Commonwealth that lead to rulings by this Court that impact, not only other DAs' offices, but members of the public throughout the Commonwealth. This does not, and never has, entitled one district attorney to intervene in a criminal matter being adjudicated in another district attorney's jurisdiction. Were it otherwise, each evidentiary hearing in criminal matters throughout the Commonwealth would become nothing short of a three-ring circus. The wheels of justice -- which already work very differently for far too many people -- would grind to a halt.

The men's reliance on this Court's analysis in *Bridgeman v. District Attorney for the Suffolk District*, 471 Mass. 465 (2015) is also sadly misplaced. Most significantly, *Bridgeman* involved intervention in a civil matter, as in, not even a criminal case. In *Bridgeman*, the Committee for Public

Counsel Services filed a motion to intervene, pursuant to Mass. R. Civ. P. 24(a), in an action brought pursuant to G.L. c. 211, § 3. *Bridgeman*, 471 Mass. at 468. "An action seeking relief under G.L. c. 211, § 3, is regarded as a new and separate civil action in the county court." *McMenimen v. Passatempo*, 452 Mass. 178, 191(2008). Accordingly, this Court appropriately analyzed the motion to intervene under Mass. R. Civ. P. 24(a). *Bridgeman*, 471 Mass. at 481-482. Here, these four men seek to intervene in an underlying criminal action in a separate, distinct and unrelated county to their own. There simply is no procedural mechanism under which they can lawfully do so.

Moreover, the office of undersigned District Attorney Rachael Rollins does not require the "assistance" of these men (Mtn. 4 n.4) to create a factual record in this case. The suggestion that their assistance is required is as misogynistic and paternalistic as it is racist. The men's motion was served on behalf of "The Commonwealth" (Mtn. 13), but the Commonwealth is already capably represented in this matter by the elected District Attorney that the people of Suffolk County chose and her very capable

Assistant District Attorneys. Any intervention by these four men in this matter would be unprecedented, unlawful, and completely unnecessary.

CONCLUSION

As the lack of citation to any relevant case law illustrates, there is no legal basis upon which the relief sought by these four men could be grounded. Accordingly, their motion should and must be denied. These men have been tasked with enforcing the law in their own individual districts, not with finding creative ways to circumvent it. Their lawless and frivolous motion should be denied.

Respectfully submitted,



RACHAEL ROLLINS
District Attorney
For The Suffolk District
BBO#: 641972
One Bulfinch Place
Boston, MA 02114
(617) 619-4000

July 2, 2020

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify under the pains and penalties of perjury that I have today made service on counsel for the defendants and "The Four District Attorneys" via electronic mail addressed as follows:

Elizabeth Doherty, Esq.
d4fr@msn.com

(for defendant Watt);

Ruth Greenberg, Esq.
ruthgreenberg44@gmail.com

(for defendant Mattis); and

David F. O'Sullivan, Esq.
David.O'Sullivan@state.ma.us

(for "The Four District Attorneys")

/s/ *Dara Z. Kesselheim*

Dara Z. Kesselheim
Assistant District Attorney
For the Suffolk District
BBO#: 660256
One Bulfinch Place
Boston, MA 02114
dara.kesselheim@state.ma.us
(617) 619-4074

July 2, 2020